BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C., 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

To: The Commission

REPLY COMMENTS OF FOX BROADCASTING COMPANY

Fox Broadcasting Company ("FBC") hereby replies to comments filed in response to the Commission's November 7, 1996 Further Notice of Proposed Rule Making, FCC 96-436 ("Attribution Notice"), in the above-captioned proceedings.

I. INTRODUCTION

Neither the Commission's past experience nor the record of this proceeding justifies the adoption of the proposed "equity or debt plus" attribution standard, particularly as it pertains to "program suppliers." In adopting the rule, the Commission would be holding a small class of investors accountable for voluntary contractual relationships that do not confer any control, while ignoring

myriad other relationships that confer a similar measure of non-controlling "influence," while artificially limiting local broadcasters' access to capital.

FBC believes it would be arbitrary and inappropriate to impose limits on debt or non-voting equity investments held by program suppliers that seem "significant" or "influential" in some indefinable way, but do not constitute actual control. Furthermore, if the purpose of the rule (like the cross-interest policy which serves as its model) is to preserve local diversity and competition by preventing common ownership of attributable and non-attributable but "meaningful" interests in the same market, there is no basis for attributing such interests to a program supplier with no other interests in the market.

II. THERE IS NO SOUND BASIS FOR REGULATING NON-CONTROLLING "INFLUENCE" THROUGH THE PROPOSED "EQUITY OR DEBT PLUS" ATTRIBUTION STANDARD.

None of the proponents of the "equity or debt plus" attribution standard have clearly identified the harmful conduct -- an amorphous concept of undesirable "influence" -- that needs to be remedied by the proposed standard, or demonstrated how it will alleviate those harms. Yet, unless they can do so, the Commission should refrain from increasing restrictions on broadcast ownership. See, e.g., Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977) (rules must be based on a rational prediction that they will remedy an identified harm); NAACP v. FCC, 682 F.2d 993 (D.C. Cir. 1982) (Commission should not continue to regulate unless it can clearly identify the harm to be remedied).

FBC believes instead that, if the standard's proponents seek to adopt a bright-line test and to avoid the delay and uncertainty of an ad hoc system (see, e.g., Comments of Media Access Project, et al., (February 7, 1997) at 10-12), they should recognize that *control*, and not some vaguely defined degree of influence, is the appropriate benchmark. The Commission has had sixty years of experience defining and determining control under Section 310(d). Control is the only kind of bright-line that makes sense in today's competitive broadcasting environment.

In fact, the Commission historically has conceded that it is difficult, if not impossible, to identify and quantify the level of "influence" that warrants limitation under the multiple ownership rules, and that it evidently seeks to constrain with the proposed "equity or debt plus" standard. See, e.g., Ownership Attribution, 97 FCC 2d 997, 1003 (1984) (acknowledging that measures of influence are "imprecise" and "inexact" and that the relationship between "cognizable ownership and actual influence" is "at best indirect"). Similarly, the record of this proceeding contains substantial analysis demonstrating that debt and non-voting stock interests should not, and can not reasonably be attributed unless they "truly represent control." See, e.g., Comments of Tele-Communications, Inc. (February 7, 1997) at 10-11 (summarizing comments); Comments of ABC, Inc. (February 7, 1997) at 4 ("equity or debt plus" standard "would impute attribution to parties on the basis of relationships with licensees that are not relevant to control").

Meanwhile, the proponents of the "equity or debt plus" standard offer only conclusory, unsubstantiated assertions regarding the nature of the undesirable

"influence" they seek to prevent. See e.g., MAP Comments at 15 (contending that the "ability" of program suppliers "to influence programming is clear"). Indeed, the proponents' parade of horribles could be applied equally to any one of myriad sources of potential "influence" over licensee decisions -- advertisers, viewers, bankers, regulators -- *none of which should qualify as having an attributable interest unless it has become the locus of licensee control.* Contractual rights obtained in connection with a station's programming or debt financing spring precisely from the controlling parties' exercise of discretion. See ABC Comments at 5-6 (licensee's decision to enter into contracts with outside suppliers is an exercise of its control over programming). The ability of a minority investor or contracting party to "influence" the operations of a station should not matter if another shareholder or group of shareholders has the power of ultimate control.

In this connection, there is no difference between owners of non-voting equity and those who hold debt or convertible debt instruments. And there is no reason to treat such interests as attributable. To the extent non-voting shareholders or debtholders seek to exert influence through contractual relationships, they should not be attributable unless linked to control mechanisms. It is the control group of an entity that governs and controls, and only those investors who are part of the control group should be regulated. Such rights or holdings are the result of the exercise of discretion by the licensee's control group and do not even presumptively indicate an abdication of control.

Non-voting equity investments or debt holdings in stations by networks and program syndicators do not give such networks and syndicators the ability to control their affiliates. In this respect, the relationship between an investor network or program syndicator and an affiliate station is indistinguishable from an affiliation relationship between any network or syndicator and station. In neither relationship does the network or syndicator exert impermissible influence over the affiliated station. Indeed, conventional lenders can impose limits on programming expenditures by licensee/borrowers. The point is that in all these cases the licensee enters into affiliation and program contracts at its discretion. It retains ultimate control and, of course, has the option of contracting with other parties.

Prohibiting networks from investing in their affiliates, as the proposed standard would effectively do by expanding the definition of attributable interests, would ignore the realities of the broadcasting business. It also would restrict the flow of capital into minority enterprises while handicapping broadcast networks vis-à-vis their cable competitors. And it would injure and prejudice networks which have developed plans based on their ability under the present rules to make non-attributable investments in their affiliates. See Comments of BET Holdings Inc. (February 10, 1997) at 2-3. In this connection, data regarding the dollar volume of station sales (see MAP Comments at 8-9) is irrelevant. There is no valid reason to limit broadcasters' access to this source of capital.

III. CONCLUSION

As a matter of policy, the Commission should encourage programmers to invest in broadcasters, rather than preclude such investment. The Commission seeks to cast its attribution net more widely, to make sure that no untoward arrangement evades regulation, but it fails to show that the public interest is presently being harmed in ways that justify this expansion. To the contrary, imposing an arbitrary restriction on investment by program suppliers would increase restraints on capital and competition, without creating any identifiable benefits.

Respectfully submitted,

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March 21, 1997